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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 10 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
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FCC Biennial Regulatory Review 2000	)	FCC 00-346
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BIENNIAL REVIEW 2000 COMMENTS

Pursuant to the Public Notice released on September 19, 2000, Sprint Corporation hereby respectfully submits its comments on the FCC's Biennial Review 2000 Staff Report. As discussed briefly below, Sprint supports the Staff's recommendation that the Commission consider four issues: overhaul of inter-carrier compensation mechanisms; review of separate subsidiary requirements for independent incumbent local exchange carriers (ILECs); consideration of the detariffing of international services; and elimination of certain Part 21 requirements. However, contrary to Staff recommendation, Sprint urges the elimination of rules implementing the National Historic Preservation Act as they apply to tower siting. Finally, Sprint proposes that Section 43.21(f) of the Rules be eliminated since it requires the filing of a redundant report.

IV.A.3.a. Intercarrier Compensation

In paragraph 48 of the Report, Staff recommends that the Commission "consider whether the various, sometimes conflicting, rules used for calculating intercarrier compensation for the origination and termination of traffic can be streamlined and harmonized." This investigation would "...explore whether a single consistent approach to intercarrier compensation for traffic origination and termination could be developed," with an eye towards devising a "...consolidated set of rules [which] could reduce opportunities for arbitrage, eliminate incentives for inefficient market entry strategies, and reduce transaction costs" (*id.*, para. 50).

Sprint enthusiastically supports the Staff's recommendation to perform a comprehensive analysis of intercarrier compensation. There is little to differentiate one minute of use from another in terms of use of the public switched network – a minute is a minute whether it is a local or long distance (exchange access, either interstate or intrastate) call, or a voice or data call. Currently, however, that minute of use might be charged a rate based on interstate Part 69 rules; intrastate access cost rules; or Part 51 rules (forward-looking economic costs, default proxy costs, or bill-and-keep arrangements). That minute of use might also be assessed "market-based" rates (as in the case of CLECs which charge access rates to IXCs that are as much as five times higher than access rates charged by ILECs in the same territory), or no usage charge at all (as in the case of ISP traffic, which is exempt from interstate access charges). Development of a rational, comprehensive system of intercarrier compensation would surely be more efficient and pro-competitive than the existing myriad of rules.

Sprint believes that this comprehensive intercarrier compensation proceeding should also consider the question of reciprocal compensation, not just for delivery of calls to ISPs, but for all forms of local traffic. We recognize that this matter is currently before the Commission in CC

Docket No. 99-68, but the focus there has only been in the narrow context of delivery of calls to ISPs. Rather than attempt to single out treatment of traffic delivered to one type of customer, a truly comprehensive review of intercarrier compensation must involve all compensation arrangements, *i.e.,* LEC-LEC, LEC-CMRS, LEC-paging, etc.

IV.A.3.b. Independent Incumbent LEC

In paragraph 51, Staff recommends that the Commission modify Part 64, subpart T, to provide for triennial review of the requirement that independent incumbent LECs provide interexchange service through a separate subsidiary. Staff seeks to eliminate the separate affiliate requirement when it no longer serves the public interest. Sprint supports this recommendation.

The FCC originally established the separate affiliate requirement for independent ILECs to protect against jurisdictional cost shifting and anti-competitive conduct in the provision of in-region interexchange service. Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof, CC Docket No. 79-252, Fifth Report and Order, 98 FCC 2d 1191, 1198 (1984). Sprint supports the elimination of this requirement when it no longer serves the public interest.

Staff's proposed triennial review of this issue is similar to Section 272(f)(1) of the Telecommunications Act of 1996 (47 U.S.C. §272(f)(1)), which specifies that the BOCs' separate subsidiary requirement shall sunset three years after the date that the BOC is authorized to provide in-region interLATA services, unless the FCC extends the three year period by rule or order. Since two of the four remaining BOCs have begun to offer in-region interLATA services, the FCC will likely review the separate affiliate obligation in the near future, as it applies to those BOCs. It is therefore appropriate and timely for the FCC to consider the separate affiliate obligation as it applies to the independent ILECs, as well.

IV.B.3.h. Detariffing International Services

In paragraph 86 of the Biennial Review Report, the Staff recommends that the Commission "extend the detariffing regime adopted for domestic interexchange services to the international services of non-dominant interexchange carriers...." Sprint supports this recommendation, since simultaneous detariffing will minimize customer confusion and administrative costs. The Commission has adopted a nine-month transition period for domestic detariffing, which ends January 31, 2001. Sprint urges the expeditious release and handling of a notice of proposed rulemaking to extend mandatory detariffing to international services, to ensure that such detariffing occurs at the same time as domestic long distance detariffing. If the proposed NPRM has not been concluded in time to allow for the detariffing of international services by January 31, 2001, the Commission should extend the date by which domestic detariffing occurs to accommodate the international detariffing schedule.

V. Summary of Review by Mass Media Bureau

In paragraph 108 of the Biennial Regulatory Review, the Mass Media Bureau states that it has reviewed its Part 73, 74, and 21 rules to promote competition and diversity, minimize unwarranted regulatory burdens, and streamline its licensing processes.[1] The Staff Report states that "Part 21 contains language and requirements that have been superseded by recent Commission rulemakings" and recommends that Part 21 be reviewed to ensure consistency with these recent rulemakings."[2] Sprint agrees that recent rulemakings have altered the regulatory landscape and that Part 21 must be updated to reflect these changes.[3] Furthermore, Sprint urges the Commission to broaden its inquiry to re-examine its overly conservative and complex MDS/ITFS protection rules and bring Commission engineering oversight of MDS/ITFS on a par with service providers using WCS, LMDS, 24 GHz and 38 GHz spectrum who deploy service within their areas without prior approval.[4]

Sprint urges the Commission to consider eliminating or modifying the following Part 21 requirements.

The 21.911 Annual Report should be eliminated. This Report requires notification as to total hours of transmission devoted to entertainment, etc. Such reporting is not relevant with respect to MDS licensees offering two-way digital wireless broadband services. Furthermore,

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[1] 47 C.F.R. §§ 73, 74, 21.

[2] Staff Report, Appendix IV at 36.

[3] See *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, 13 FCC Rcd 19112 (1998), *recon*,, 14 FCC Rcd 12764 (1999), *further recon.*, FCC No. 00-244 (rel. July 21, 2000).

[4] Unlike the WCA, which states in its comments to this Review that this proceeding is not the appropriate vehicle for addressing regulatory barriers to widespread deployment of high-bandwidth, fixed wireless systems, Sprint takes to heart the Commission's invitation in ts Public Notice that parties "recommend changes to rules that are not specifically identified in the staff report, and to submit suggestions regarding substantive or administrative provisions that might enable the Commission to operate more efficiently or effectively." (See WCA Comments at 2-3).

interested parties, such as BTA authorization holders, could be relied upon to file petitions demonstrating a lack of service to the public.

The 21.11 (a) Form 430, Licensee Qualification Report "no change" notification should be eliminated. Annual notification that no change has occurred should be eliminated as it is obviated by the Section 21.11 requirement of notification when a change *has* occurred. This requirement has already been eliminated for most other services for which 430s are filed.[5]

The 21.43 restriction on pre-grant construction should be eliminated. This restriction barring an MDS licensee from commencing construction of facilities until the associated application has been granted unnecessarily delays construction of new facilities and should be eliminated.

The 21.937 (a) (3) filing of interference consent agreements should be eliminated. As a result of the MDS/ITFS Two-Way Order, applicants are required to certify that they have obtained any necessary interference consents and this filing of interference consent agreements is therefore no longer justified.

Sprint's Broadband Wireless Group is a member of the Wireless Communications Association, International, Inc. ("WCA") the trade association representing the fixed wireless communications industry, which is also filing comments in this proceeding. Sprint supports the comments that the WCA is filing, but Sprint suggests that the Commission be more expansive in its review of the way it regulates MDS and ITFS licensees.

With the advent of two-way, broadband fixed wireless services and with the development of the Appendix D interference protection rules, regulation of MDS and ITFS licensees must and can move from an era of detailed Commission engineering oversight to one in which regulation

is triggered only in instances of market failure or interference complaints brought by injured licensees.[6] If MDS and ITFS-based fixed wireless services are to compete with the likes of LEC- provisioned DSL services and CATV -provisioned cable modem service, they must be regulated on a par with Wireless Communications Service ("WCS"), Local Multipoint Distribution Service ("LMDS"), fixed wireless services in the 24 GHz and 39 GHz bands and Personal Communications Service ("PCS"), which enjoy minimal regulatory oversight -- particularly with respect to engineering build-out.

For example, unlike providers of the less stringently regulated services listed above, MDS and ITFS licensees are required to notify the Commission of and, in many instances, obtain prior Commission approval for changes in network infrastructure. Once approved, and even in instances where no approval was required, certificates of completion must be filed informing the Commission that the proposed changes have been made. Such burdensome engineering oversight is inconsistent with the recently developed two-way MDS/ITFS licensing regime (which looks to licensees rather than Commission to enforce interference protection rights) and manifestly different from the regulatory oversight of network engineering of WCS, LMDS, PCS and other fixed wireless licensees. Sprint encourages the Commission to take a hard look at the degree of its engineering oversight -- in particular, all the activities identified on the FCC's Form 331 -- and eliminate, or at least minimize, the Commission-related administrative burdens associated therewith.

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[5] See, e.g., Reorganization and Revision of Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Services, 11 FCC Rcd 13449, at ¶ 17 (1996) (eliminating requirement for all microwave licensees).

[6] *See* 47 C.F.R. § 21.909 (d).

Appendix IV, Part 1, Subpart I –Procedures Implementing the National Environmental Policy Act of 1969.

The Commission has adopted rules implementing several environmental statutes, including the National Historic Preservation Act ("NHPA").[7] Commission Staff has recommended that the Commission retain its rules implementing NHPA "because they are statutorily mandated."[8] Sprint opposes the Staff recommendation here, at least insofar as these NHPA rules are applied to the siting of radio towers and antennas, and recommends instead that these rules be rescinded or, at a minimum, streamlined.

Sprint believes that there are several reasons why NHPA does not apply to tower siting, and that the continued application of the NHPA rules to tower siting is legally unjustified, discriminatory (since such rules do not apply to all tower owners), and administratively burdensome. Therefore, Sprint urges the Commission to consider the legal and economic basis of these rules. At a minimum, the Commission should consider streamlining the existing rules in two ways: (1) categorically exclude from NHPA requirements the collocation of an antenna on an existing tower or structure, and (b) eliminate the requirement that tower owners must prepare environmental assessments when it is determined that the proposed tower will have no adverse environmental effect.

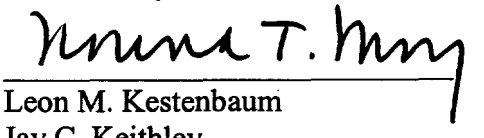
[7] *See* 16 U.S.C. §§ 470 *et seq.* and 47 C.F.R. §§ 1.1301-19.
[8] Biennial Review Staff Report at 10.

Miscellaneous Rules

In addition to the rules identified by the Staff, Sprint recommends that Part 43, paragraph 43.21(f) be eliminated. This section requires LECs to file the ARMIS 43-01 report (information on their revenues, expenses, taxes, plant in service, other investment and depreciation reserves for the preceding year). Because this report is duplicative of information provided in the ARMIS 43-02, 43-03 and 43-04 reports, the Commission should eliminate Section 43.21(f) of the Rules. Any information in 43-01 which is not already included in other reports (7 lines of usage data) could be folded into one of those other ARMIS reports.

Respectfully submitted,

SPRINT CORPORATION



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October 10, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent by Hand Delivery on this 10th day of October, 2000 to the parties listed below.

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